


BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 2001-65-C - ORDER NO. 2002-95

FEBRUARY 11, 2002

IN RE: Proceeding to Establish Prices for BellSouth	)	ORDER DENYING
Telecommunication, Inc.'s Interconnection	)	PETITION FOR
Services, Unbundled Network Elements and	)	RECONSIDERATION
Other Related Elements and Services.	)	



This matter comes before the Public Service Commission of South Carolina (the Commission) on the Petition for Reconsideration of our Order No. 2001-1089 filed by the Consumer Advocate for the State of South Carolina (the Consumer Advocate). Because of the reasoning stated below, which is similar to our reasoning in Order No. 2001-1089, we deny the Petition.

The Consumer Advocate states that this Commission, in Order No. 2001-1089, refused to allocate any portion of the local loop to the high frequency portion of the loop dedicated to data service. The Consumer Advocate states that this decision to reject the recommendations of Consumer Advocate witness Buckalew, and to allocate 100% of the costs of the loop to basic voice services is in violation of Section 254(k) of the Telecommunications Act of 1996. Section 254(k) provides as follows:

A telecommunications carrier may not use services that are not competitive to subsidize services that are subject to competition. the Commission, with respect to interstate services, and the States, with respect to intrastate services, shall establish any necessary cost allocations rules, accounting safeguards, and guidelines to ensure that services included in the definition of universal service bear no

more than a reasonable share of the joint and common costs of facilities used to provide those services.

47 U.S.C. Section 254(k)

The Consumer Advocate states that basic voice services clearly fall under the definition of universal service supported services, while high speed data services clearly do not fall under that definition. The Consumer Advocate alleges that allocating no costs to xDSL means that people who are only voice local exchange users and do not use the loop for high speed data services have to pay for the cost of conditioning the loop for data while the actual data users pay nothing to use the loop. The Advocate further asserts that in BellSouth's forward looking cost analysis of the loop, all loops are xDSL capable, and xDSL costs are included in loop costs. Under the Consumer Advocate's theory, to allocate 100% of loop costs to basic voice services results in those services subsidizing competitive data services, in violation of Section 254(k).

In addition, the Consumer Advocate avers that there is no evidence in the record of this case to support the Commission's finding that acceptance of Buckalew's proposal would leave BellSouth unable to recover its loop costs.

BellSouth Telecommunications, Inc. (BellSouth) filed a response to the Petition. BellSouth points out that our original decision in Order No.2001-1089 is consistent with the only Federal Communications Commission (FCC) Order ruling on this issue. The FCC stated that in setting prices for line sharing, "states may require that incumbent LECs charge no more to competitive LECs for access to shared local loops than the amount of loop costs the incumbent LEC allocated to ADSL services when it established its interstate retail rates for those services. This is a straightforward and practical

approach for establishing rates consistent with the general pro-competitive purposes underlying the TELRIC principles.” *In re: Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket Nos. 98-147 and 96-98 (December 9, 1999)(“*Line Sharing Order*”), at Paragraph 139. The FCC was concerned with the potential for a price squeeze if ILECs were to “allocate little or no costs to their xDSL services, while competitive LECs, when offering xDSL service, must purchase access to a second line and pay for the related unbundled network element rates, which includes a loop cost for an entire loop.” *Line Sharing Order*, at Paragraph 141. The FCC determined that “[b]y requiring incumbent LECs to provide access to the shared local loops for no more than they allocate to their own xDSL services, the price squeeze may be redressed by ensuring competitive LECs and ILECs incur the same cost for access to the bandwidth required to provide xDSL services.” We agree with BellSouth’s position in this matter.

It should be noted that BellSouth did not allocate any loop cost to its interstate ADSL offering. *Tr., Cox* at 230. Consequently, BellSouth did not allocate any of the shared loop cost to the high frequency portion of the loop. We still agree with the language in the FCC Order. We believe that we properly concluded in our previous Order that BellSouth should not be required to allocate any of the loop cost to the data frequency portion of the loop, based on the reasoning as stated in the FCC Order.

Second, BellSouth alleges that Consumer Advocate witness Buckalew failed to recognize the distinction between line sharing and line splitting. The *Line Sharing Order*

requires ILECs to share the spectrum of the loop the ILEC is using to provide voice service. Buckalew appears to assume that the CLECs will agree to share with other CLECs the spectrum of the loops ordered as UNEs from BellSouth, yet there is no requirement that they do so. Bell notes that we recognized in our prior Order that Buckalew's recommendation to split the loop cost between the voice and data providers removes any incentive for CLECs to engage in such sharing. Under Buckalew's proposal, the cost to the CLEC of any loop would be the same, whether the CLEC shares its loop or not. Bell further states that CLECs would likely prefer to have their own loop if there is no financial motivation to share it with another CLEC. Further, Bell states its belief that Buckalew's proposal would eliminate one of the goals of the FCC by ensuring that loops are not utilized in the most efficient manner.

We agree with Bell. It appears to us that Buckalew's proposal would not encourage the sharing of the loop, and certainly ensures non-efficiency in loop utilization. This provides another basis for rejection of the Consumer Advocate's position.

Lastly, BellSouth states that if the Commission were to accept the Consumer Advocate's proposal, it would be unable to recover 50% of the cost of each loop that provides only voice or only data service. BellSouth witness Cox testified that the only way that BellSouth could possibly recover the TELRIC of a loop if the Commission adopted the Consumer Advocate's proposal would be if every loop in service supported both voice and data service. Tr., Cox Rebuttal at 229. Ms. Cox further testified that "such a scenario is entirely unrealistic and unachievable." *Id.* Thus, according to BellSouth, there is evidence in the record of the case to support the Commission's finding that

acceptance of the Consumer Advocate's proposal would leave BellSouth unable to recover its loop costs. Bell points out that we already determined that "[s]uch a result is unfair and undesirable." Final UNE Order at 12.

Once again, we agree with BellSouth. The quoted language is certainly evidence in the record of the case to support the Commission's finding that acceptance of the Consumer Advocate's proposal would leave BellSouth unable to recover its loop costs. We believe that this is an additional basis for rejecting the Consumer Advocate's position. We do not believe that our holding violates Section 254(k) of the Telecommunications Act of 1996.

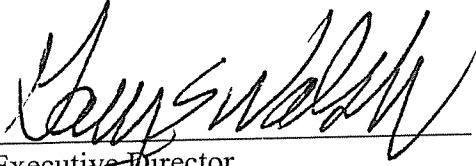
Accordingly, based on the reasons cited above by BellSouth, with which we agree, we deny the Consumer Advocate's Petition.

This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

  
Chairman

ATTEST:

  
Executive Director

(SEAL)